



REPUBLIC OF KENYA



KENYA LAW
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In re Baby AF (Adoption Cause E097 of 2022)
[2022] KEHC 16398 (KLR) (Family) (16 December 2022) (Judgment)

Neutral citation: [2022] KEHC 16398 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

ADOPTION CAUSE E097 OF 2022

MA ODERO, J

DECEMBER 16, 2022

IN THE MATTER OF THE CHILDREN'S ACT, 2001

IN THE MATTER OF BABY AF AKA

B

IN THE MATTER OF

ZPMM 1ST APPLICANT

ERN 2ND APPLICANT

JUDGMENT

1. Before this court is originating summons dated June 21, 2022 by which the applicants seek the following orders:-

- “1. Spent
2. Spent
3. That the applicants be authorized to adopt baby AF aka B to be known as IN.
4. That the child be presumed to be a Kenyan citizen by birth.
5. That the child's date of birth be November 22, 2019 and the place of birth be Mwariki area, Nakuru.
6. That the Registrar-General be directed to enter the adoption in the adopted children register.
7. That the Director Immigration be directed to issue the child with a Kenya passport.



8. That EGM and RJNK, be appointed as the legal guardians of the child in the event of the death or incapacity of the applicants before the child is of full age and fully self reliant.
 9. That the court be pleased to make any further orders it deems necessary.”
2. The application was supported by the statement of even date sworn by the two applicants. The matter was canvassed by way of *viva voce* evidence on the virtual platform.
 3. The applicants ZPMM and ERN are a couple whose union has been blessed with one (1) biological child, a daughter who was born on April 19, 2011 and is now eleven (11) years old. The couple also have a son aged eight (8) years whom they adopted in March 2016. A copy of the adoption order is annexed to the summons (Annexure LJ ‘11’).
 4. The couple told the court that they wish to further expand their family by adopting the subject child. The applicants both confirm that they understand and accept the legal implications of an adoption order. They undertake to accord to the subject child all the rights due to a biological child including the right to inherit.

Analysis and Determination

5. I have considered the application for adoption, the evidence adduced in support thereof as well as the various reports filed in court.
6. The prerequisites for before an adoption order can be made are set out in section 184 (1) (a) and (b) of the *Children’s Act* 2022: -
 - “(1) A person shall not commence any arrangements for the adoption of a child unless—
 - (a) The council, in accordance with the rules, has declared the child free for adoption; and
 - (b) The child has attained the age of six weeks.”
7. The subject child was born on November 22, 2019. A copy of his birth certificate serial Number XXXX is annexed to the summons (Annexure ‘AF-1’). Thus the child is now aged three (3) years old and is above the six (6) week age limit provided for in law.
8. Buckner Kenya Adoption Services, which is a registered adoption agency have annexed to their report a copy of their certificate serial number XXXX dated November 13, 2020 declaring the child free for adoption. I am therefore satisfied that all the legal prerequisites for an adoption order have been met.
9. The duty of this court is to analyze the evidence on record to determine whether the applicants are suitable adoptive parents. The applicants are both Kenyan citizens as evidenced by the annexed copies of their national identity cards. (Annexure ‘AF-8’).
10. The couple have been married for years having solemnized their union on August 29, 2009. A copy of their marriage certificate serial number XXXX is annexed to the summons (Annexure ‘AF-9’).
11. The couple have one (1) biological child a daughter who was born in April 2011. The 2nd Applicant told the court that she experienced a lot of problems during her second pregnancy which resulted in the loss of the baby and as such the couple made the decision to grow their family through adoption.



- They have an eight (8) year old son whom they adopted in the year 2016. They now wish to adopt another child.
12. The applicants are both gainfully employed. The 1st applicant works as a general manager with the [particulars withheld]. He has annexed to the summons a copy of a letter dated September 9, 2021 confirming his employment (Annexure 'AF-12').
 13. The 2nd applicant who is pursuing her doctorate studies at [particulars withheld] runs a business. The couple realize a joint monthly income of approximately Kshs 300,000 which is sufficient to enable them provide for the needs of their children. They have annexed to the summons copies of the 1st applicants Bank Statements for an account held with the Bank of Africa (Annexure 'AF-13'). All in all I am satisfied that the applicants are financially secure.
 14. The applicants are christians and intend to raise the child in the christian faith. They worship at CITAM – [particulars withheld] church. Both applicants were examined by a doctor and were each found to be mentally and physically fit. The applicants have annexed to the summons copies of clearance certificates issued to them by the Directorate Of Criminal Investigations confirming that neither has a criminal record (Annexure 'AF-15').
 15. The applicants told the court that their respective families are aware of and support their intention to adopt the subject child. They have appointed the 1st applicants brother and his wife as the legal guardians for the child. The proposed legal guardians EGM and RJNK have each signed a consent dated September 16, 2021 confirming their willingness to act as legal guardians for the child in the event of the death and/or incapacity of the applicants.
 16. Based on the material presented before this court I am satisfied that the applicants are suitable adoptive parents.
 17. The subject child who was born on November 22, 2019 was found abandoned aged barely two (2) weeks old on November 22, 2019 along the roadside in the Mwariki area of Nakuru county. A good samaritan rescued the child and reported the abandonment at Mwariki Police Post *vide* OB Number XXXX of November 22, 2019. The child was taken to Rift Valley PGH for medical assessment and was later committed by the Nakuru childrens court to New Life Home Trust as a child in need of care and protection. On November 28, 2020 the child was released into the custody of the applicants under a foster care agreement.
 18. Article 14 (4) of the *Constitution* of Kenya 2010 provides that: -
 - “(4) A child found in Kenya who is, or appears to be less than eight years of age and whose nationality and parents are not known, is presumed to be a citizen by birth.”
 19. The subject child was found abandoned at the age of two (2) weeks within Nakuru county in the Republic of Kenya. Efforts by police to trace the biological mother and/or relatives of the child have borne no fruit. To date no person has come forward to claim the child. A final police letter dated September 24, 2020 confirms this fact. I therefore declare the child to be a citizen of Kenya by birth.
 20. Given the fact of his abandonment there exists no known person from whom consent for this adoption can be sought and/or obtained. In the circumstances, I do waive the requirement for consent in line with section 187(1) (a) *Children Act* 2022.



21. In deciding upon any matter involving a child, courts are obliged to give priority to the best interests of the said child. Section 8 (1) of the [Children Act](#) 2022 provides:-

“(8). (1) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies—

(a) the best interests of the child shall be the primary consideration;” (own emphasis)

22. This is a child who was abandoned shortly after her birth. She faced an uncertain future living in children homes and other similar institutions. This adoption provides the child with the opportunity to be raised in a stable and loving home environment.

23. The child has been living with the applicants in their home for close to two (2) years. She has undoubtedly bonded with the applicants whom she views as her parents. The child knows no other family. I was able to see the child online. She was a healthy calm toddler peacefully seated on the lap of his mother.

24. A home visit was conducted by the childrens officer on September 16, 2022. The applicants reside in their own home in Ongata Rongai, Kajiado county. The home was spacious and well furnished within a secure compound with adequate space for the child to play. The children officer noted that the child has bonded very well with the other children in the family.

25. I have considered the reports prepared by the Adoption Agency, the guardian *ad litem* and Director of Children Services. All three reports were positive and all recommend the adoption.

26. In conclusion, I find that this adoption does serves the best interests of the child. Accordingly, I do allow this application and make the following orders:-

1. The applicants ZPMM and ERNM are authorized to adopt the child known as baby AFB.
2. Upon adoption the child shall be known as INM.
2. The child is declared to be a Kenyan citizen by birth and is entitled to all the rights and privileges pursuant thereto.
3. EGM and RJNK,are appointed as the legal guardians of the child.
4. The Registrar General is directed to make relevant entry in the adopted children register.

DATED IN NAIROBI THIS 16TH DAY OF DECEMBER, 2022.

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MAUREEN A. ODERO
JUDGE

